



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

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2 October 2006

Mr. Robert Schneider, Chairman  
Ms. Pamela Creedon, Executive Officer  
Mr. Loren J. Harlow, Principal WRCE  
Mr. Lonnie M. Wass, Supervising WRC Engineer  
Mr. Shelton R. Gray, Sr. Engr. Geologist  
Mr. Douglas Wachtell, Engr. Geologist  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission  
Hardcopy if Requested

RE: Cleanup and Abatement Order for Coffee Petroleum Inc., Coffee Lease Round  
Mountain Oil Field, Kern County

Dear Messrs. Schneider, Harlow, Wass, Gray, Wachtell and Ms. Creedon:

The California Sportfishing Protection Alliance and Watershed Enforcers (CSPA) has reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative Cleanup and Abatement Order (Order or C&A) for Coffee Petroleum Inc., Coffee Lease Round Mountain Oil Field, Kern County (IWWTF or Discharger) and submits the following comments.

CSPA requests status as a designated party for this proceeding. CSPA is a 501(c)(3) public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded surface and ground waters and associated fisheries. CSPA members reside, boat, fish and recreate in and along waterways throughout the Central Valley.

The proposed C&A order addresses the illegal discharge of up to 5.88 million gallons of designated wastes annually to unlined sumps and Poso Creek. These discharges have occurred for many years. Indeed, the Regional Board informed the Discharger, prior to the purchase of the site in 1998 and numerous subsequent times, that the discharge was in violation of the regulations and must be brought into compliance. Outrageously, the Regional Board yet again refuses to assess monetary penalties to a

recalcitrant discharger for egregious long-standing violations of Porter-Cologne and the federal Clean Water Act. There can be little doubt that the Regional Board's failure to penalize blatant violators of the most fundamental water quality regulations has contributed and will continue to contribute to the increasing degradation of water quality throughout the Central Valley.

California Water Code (CWC) Section 13000 states, in part, that Legislature declares "...that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state." CWC Section 13000 demonstrates the Legislative intent that the "state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation originating inside or outside the boundaries of the state." In order to fulfill the Legislative intent to protect water quality, the State Water Resources Control Board adopted the Water Quality Enforcement Policy (Enforcement Policy) February 2002.

The Enforcement Policy states, "The primary goal of this Enforcement Policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. Toward that end, it is the intent of the SWRCB that the RWQCBs operate within the framework provided by this Policy."

The Discharger has an extensive history of violations (Findings No. 19 through 26) and has repeatedly failed to comply with Clean Water Act, CWC and Regional Board Orders. The Enforcement Policy classifies the unpermitted discharge to surface waters, (Finding No. 18) as a priority violation for which an Administrative Civil Liability Order is appropriate. In addition, the Discharger's violations for potential groundwater pollution from the discharge of designated waste to an unlined sump are also subject to penalties. Inexplicably, the Order fails to assess any penalties and is silent on the amount of economic benefit the Discharger has received from delaying compliance and not completing the improvement project. The Enforcement Policy, page 40, defines "Economic benefit is any savings or monetary gain derived from the acts that constitute the violation." The Discharger has achieved substantial economic benefits derived from the following violations:

- a. The Discharger failed to comply with Title 27 regulations and discharged to unlined sump for seven years without constructing the proper facility,
- b. The Discharger failed to obtain and comply with an NPDES permit for the discharge of waste to Poso Creek,
- c. The Discharger failed to install monitoring wells to determine the impact to the underlying groundwater,
- d. The Discharger has failed to conduct cleanup activities.

At a minimum, the Regional Board must issue an ACL that recovers the economic benefit the Discharger has achieved from the years of flagrant noncompliance including interest.

After the seven-year pattern of recalcitrant behavior shown by this Discharger, the Regional Board should be acutely aware that 10 percent of the Dischargers consume 80 percent of staff resources. The Enforcement Policy, page 41, states “Staff costs may be some of the “other factors that justice may require”, and should be estimated when setting an ACL. Staff should estimate the cost that investigation of the violation and preparation of the enforcement action(s) has imposed on government agencies. This can include all activities of a progressive enforcement response that results in the ACL. Staff costs should be added to the amount...” The Order fails to show the amount of cost that the Regional Board has incurred for this Order. The CDO must consider “other matters that justice may require” and collect cost recovery for staff time spent developing the CDO.

Thank you for considering these comments. If you have questions or require clarification, please don’t hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" and last name "Jennings" clearly distinguishable.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance